

BOARD OF COUNTY COMMISSIONERS
Agenda Item Summary

Meeting Date January 21, 2004 **Division** **County Attorney**

AGENDA ITEM WORDING

Public Hearing of Resolution of the Recommended Beneficial Use Determination of Victor and Thelma Holmstrom.

ITEM BACKGROUND:

Hearing Officer J. Jefferson Overby issued a Proposed Beneficial Use Determination.

PREVIOUS RELEVANT BOCC ACTION:

Adoption of Monroe County Year 2010 Comprehensive Plan and ROGO.

CONTRACT/AGREEMENT CHANGES

N/A

STAFF RECOMMENDATIONS

Approval.

TOTAL COST
COST TO COUNTY

BUDGETED Yes No
SOURCE OF FUNDS

APPROVED BY: County Attorney ☒ OMB/Purchasing ☐ Risk Management ☐

DIVISION DIRECTOR APPROVAL:


J. R. COLLINS

DOCUMENTATION: Included ☐ To Follow ☐ Not Required ☐

AGENDA ITEM # _____

Q2

RESOLUTION NO. -2004

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY, EVIDENCING THE BOARD'S APPROVAL OF A RECOMMENDED BENEFICIAL USE DETERMINATION PROMULGATED BY THE SPECIAL MASTER, IN RE: VICTOR L. AND THELMA L. HOLMSTROM

WHEREAS, on January 4, 1996, the Monroe County Year 2010 Comprehensive Plan became effective; and

WHEREAS, the application of Victor and Thelma Holmstrom for determination of beneficial use was heard by Special Master J. Jefferson Overby on September 30, 2003; now therefore:

BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY, FLORIDA, that:

The Findings of Fact and Conclusions of Law and recommendations of the Special Master as set forth in the proposed determination are APPROVED and the application of Victor and Thelma Holmstrom is accordingly APPROVED, subject to the conditions listed in the attached Proposed Beneficial Use Determination, dated October 29, 2003.

PASSED AND ADOPTED by the Board of County Commissioners of Monroe County, Florida, at a regular meeting of the Board held on the 21st day of January, 2004.

Mayor Nelson
Mayor Pro Tem Rice
Commissioner McCoy
Commissioner Neugent
Commissioner Spehar


(SEAL)
Attest: DANNY L.KOLHAGE, Clerk

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

By _____
Deputy Clerk

By _____
Mayor/Chairperson

jBUHolmstrom

MONROE COUNTY ATTORNEY
APPROVED AS TO FORM:

ROBERT N. WOLFE
CHIEF ASSISTANT COUNTY ATTORNEY
Date 12-29-03

BENEFICIAL USE
MONROE COUNTY SPECIAL MASTER

IN RE: Victor L and Thelma L Holmstrom
- Beneficial Use Application

PROPOSED BENEFICIAL USE DETERMINATION

The above-entitled matter was originally heard at a duly advertised and regularly scheduled, public hearing on September 30, 2003, at the Marathon Government Center.

The applicants, Victor L and Thelma L Holmstrom, were unrepresented, and Special Assistant County Attorney, Karen Cabanas, and Planning Director, K. Marlene Conaway, represented Monroe County.

ISSUE

Whether the applicants will be denied all reasonable economic use of their property by application of Policy 204.2.6 and Policy 204.1.1 of the Year 2010 Comprehensive Plan, and whether the applicants are entitled to relief under Policies contained in Objective 101.18 of the Year 2010 Comprehensive Plan (as administered and implemented in the "Agreement between the Department of Community Affairs and Monroe County" dated February 23, 1998), the approved portions of Ordinance 052-1997 and the Monroe County Code.

FINDINGS OF FACT

1. Applicants purchased the Subject property, a vacant lot, Lot 22, Block 4, Breezeswept Beach Estates, Ramrod Key, in March 1988. RE # 00202310-000000. The Improved Subdivision (IS) designation of the property allows one single family residential dwelling and accessory uses to be located on the lot. It has **NO** TDR value under the current code.
2. Applicants applied timely for beneficial use designation in March, 2003.
3. The County's ADID (Advance Identification) of wetlands maps initially determined this property to be "under seasonal high water" which would automatically categorize the lot as "red-flag wetland and require 100% open space". Monroe County Code. Section 9.5-348 (d) (6) of the Monroe County Code requires a county biologist to determine the "quality of the wetland" through KEYWEP (Florida Keys Wetland Evaluation Procedure). This has been recently completed.
4. Based upon this evaluation a score sheet was prepared by county staff and the subject property was determined to be "a buildable wetland property" (see Field Summary Page-Attached).
5. The Planning Department has found that the applicants have no avenue for obtaining a variance or variances from the regulations formerly forbidding building on this lot.

A. To deny beneficial use would essentially deprive the applicants,
Victor L and Thelma L Holmstrom, of any economically

reasonable beneficial use of the property and their reasonably incurred expenses, not including the cost of the land itself.

- B. Without a Beneficial Use Determination in favor of the applicants, the building of a structure, at this location, on Ramrod Key would be impossible in the foreseeable future and denial of beneficial use would be a denial of any reasonable economic use at this time.
- C. Because the applicants, purchased the property in 1988, many years prior to Monroe County's adoption of the Year 2010 Comprehensive Plan, the applicants, had every reason to expect they would be allowed to construct a single family home on the subject property.

CONCLUSIONS OF LAW

1. The applicants' property is in a platted subdivision, with roads and utilities in place.
2. Based upon the County's recent calculations in KEYWEP, the lot should be treated as a "buildable wetland property" subject to ROGO.
3. Pursuant to the Objective and Policy #101.18 adopted by Monroe County for the purpose of the determination of beneficial use and for the effect of such determination, I have considered the economic impact of the policy or regulations that prohibit the construction of the a single family residence on the applicants' property and have considered the extent to which

present Monroe County regulations have interfered with the applicants' reasonable investment backed expectations.

4. Although just compensation could be the "preferred option" under Policy 101.18.5, there is no evidence that the Land Authority is interested in acquisition of the lot which is located in the developed residential subdivision area of Ramrod Key.

WHEREFORE, I recommend to the Board of County Commissioners that a Final Beneficial Use Determination be adopted, on the subject property, due to the applicants' having met the criteria for eligibility set forth at 9.5-172 Monroe County Code. This approval should be subject to the following conditions:

1. This Beneficial Use Determination shall not exceed five (5) years and is contingent upon the applicants releasing Monroe County from any and all liability, past, present and future, with regard to the subject property and improvements thereon.

2. The applicants shall not be exempt from Monroe County's Rate of Growth Ordinance.

DONE AND ORDERED this October 29, 2003



J. JEFFERSON OVERBY
Special Master